Supreme Court, U.S.
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No.

In The
Supreme Court Of The United States

ALAN ROGER HARRIS,

Petitioner,

v.

STATE OF MICHIGAN,

Respondent.

On Petition For Writ Of Certiorari
To The Michigan Supreme Court

Petition for Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

1. Is MCL 750.145c(2); MSA 28.342a(2), which permits the conviction of a person for a felony punishable by 20 years in prison if that person "prepares . . . to arrange for . . . any child sexually abusive activity," but which does not define the terms "prepares" or "arrange for," so vague and overbroad as to violate the First and Fourteenth Amendments to the United States Constitution?

2. Does a state violate the Due Process Clause of the Fourteenth Amendment by criminalizing the mere preparation or arranging for criminal activity, when the well-established historical practice of the common law and state law has long drawn a distinction between an attempt and the mere preparation to commit a crime?

3. Can a search warrant affidavit supply probable cause to search an individual's home and computer solely on the basis of nonspecific boilerplate language stating that pedophiles are known to collect sexually explicit materials and store pornography on their computers?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES v

OPINIONS AND ORDERS BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL AND STATUTORYPROVISIONS INVOLVED 1

STATEMENT OF THE CASE 3

REASON FOR GRANTING THE WRIT 7

TABLE OF CONTENTS (CONT'D)

Page

I. THE MICHIGAN SUPREME COURT HAS REPEATEDLY REFUSED TO LIMIT THE APPLICATION OF MCL 750.145c(2); MSA 28.342a(2) IN A MANNER WHICH IS CONSISTENT WITH THIS COURT'S ESTABLISHED PRECEDENT HOLDING THAT IMPRECISE CRIMINAL STATUTES VIOLATE THE FIRST AND FOURTEENTH AMENDMENTS, THUS PERMITTING THE STATUTE TO UNCONSTITUTIONALLY INFRINGE UPON THE USE OF THE INTERNET AND UPON OTHER LEGITIMATE ACTIVITIES7

II. BY CRIMINALIZING THE MERE PREPARATION TO ARRANGE FOR CRIMINAL ACTIVITY, MCL 750.145c(2); MSA 28.342a(2) VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT18

TABLE OF CONTENTS (CONT'D)

Page

III. A SEARCH WARRANT AFFIDAVIT WHICH RELIES SOLELY UPON BOILERPLATE LANGUAGE WHICH PURPORTS TO SHOW WHAT EXPERTS BELIEVE ABOUT PEDOPHILES IS INSUFFICIENT TO ESTABLISH PROBABLE CAUSE TO SEARCH AN INDIVIDUAL'S HOME23

CONCLUSION 27

APPENDIX

TABLE OF AUTHORITIES

Cases **Page**

Broadrick v. Oklahoma, 413 U.S. 601 (1973) 9

City of Chicago v. Morales, 119 S. Ct. 1849 (1999) ..... 9, 10, 11, 13 passim

Coates v. Cincinnati, 402 U.S. 611 (1971) 12

Colautti v. Franklin, 439 U.S. 379 (1979) 11

Duncan v. Louisiana, 391 U.S. 145 (1968) 22

Forsyth County, Georgia v. Nationalist Movement, 505 U.S. 123 (1992) 11

Grayned v. City of Rockford, 408 U.S. 104 (1972) 12

Illinois v. Gates, 462 U.S. 213 (1983) 23, 24

In re Winship, 397 U.S. 358 (1970) 22

Kolender v. Lawson, 461 U.S. 352 (1983) 9, 12

TABLE OF AUTHORITIES (CONT'D)

Cases **Page**

Palmer v. City of Euclid, 402 U.S. 544 (1971).....12

Papachristou v. Jacksonville, 405 U.S. 156 (1972).....12

People v. Coleman, 350 Mich. 268, 86 N.W.2d 281 (1957).....19

People v. Frost, 148 Mich. App. 773, 384 N.W.2d 790 (1985).....19

People v. Jones, 443 Mich. 88, 504 N.W.2d 158 (1993).....19

People v. Stapf, 155 Mich. App. 491, 400 N.W.2d 656 (1986).....19

People v. Thousand, No. 116967 (Mich. July 27, 2001).....17

People v. Youngs, 122 Mich. 292, 81 N.W. 114 (1899).....20

TABLE OF AUTHORITIES (CONT'D)

Cases **Page**

Posters 'N' Things, Ltd. v. United States, 511 U.S. 513 (1994) 11

Reno v. American Civil Liberties Union, 521 U.S. 844 (1997) 7, 11

State v. Mische, 448 N.W.2d 415 (N.D. 1989) 25

United States v. Gomez, 652 F. Supp. 461 (E.D.N.Y. 1987) 25

United States v. Lacy, 119 F.3d 742 (9th Cir. 1997) 24

United States v. Rabe, 848 F.2d 994 (9th Cir. 1988) 24

United States v. Reese, 92 U.S. 214 (1876) 11

United States v. Ruiz, 822 F. Supp. 708 (D. Kan. 1993) 25

TABLE OF AUTHORITIES (CONT'D)

Cases **Page**

United States v. Savoca, 739 F.2d 220 (6th Cir. 1984), *on reh'g*, 761 F.2d 292 (6th Cir.), *cert. denied*, 474 U.S. 852 (1985) 23

United States v. Schultz, 14 F.3d 1093 (6th Cir. 1994) 25

Zurcher v. Stanford Daily, 436 U.S. 547 (1978) 23

Statutes

MCL 600.309; MSA 27A.309 6

MCL 750.145c; MSA 28.342a ..... i, 2, 3, 5 passim

MCR 7.203 6

28 U.S.C. § 1257 1

U.S. Const. amend. I ..... i, 1, 7, 9 passim

U.S. Const. amend. IV.....23, 24, 26

TABLE OF AUTHORITIES (CONT'D)

Statutes **Page**

U.S. Const. amend. XIV ..... i, 2, 7, 10 passim

Other

1 Charles E. Torcia, *Wharton's Criminal Law* 280 (12th ed. 1978) 20

F.B. Sayre, *Criminal Attempts*, 41 Harv. L. Rev. 821 (1928) 18

Wayne R. LaFave & Austin W. Scott Jr., *Handbook on Criminal Law* § 59 (1972) 17, 18

OPINIONS AND ORDERS BELOW

The order of the Michigan Supreme Court denying the application of Petitioner Alan Roger Harris to appeal to that court, dated June 12, 2001, will not be published. It is set out in the Appendix at page A-1. The unpublished decision of the Michigan Court of Appeals, dated January 22, 2001, is set out in the Appendix at page A-3. The oral ruling of the Wayne Circuit Court, dated November 10, 2000, appears in the Appendix at page A- 4.

STATEMENT OF JURISDICTION

The final order of the Michigan Supreme Court from which this action is taken was issued on June 12, 2001. In that order, the Michigan Supreme Court denied the Application for Leave to Appeal filed by Petitioner Alan Roger Harris. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution states:

> Congress shall make no law . . . abridging the freedom of speech[.]

The Fourteenth Amendment to the Constitution states in pertinent part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MCL 750.145c(2); MSA 28.342a(2) provides:

> A person who persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material, or a person who arranges for, produces, makes, or finances, or a person who attempts or prepares or conspires to arrange for, produce, make, or finance any child sexually abusive activity or child sexually abusive material is guilty of a felony, punishable by imprisonment for not more than 20 years, or a fine of not more than $100,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child, or that person has not taken reasonable precautions to determine the age of the child.

STATEMENT OF THE CASE

Petitioner Alan Roger Harris was charged by Information in the Wayne County, Michigan, Circuit Court with one count of Child Sexually Abusive Activity, in violation of MCL 750.145c; MSA 28.342a(2). The charge arose out of a conversation which Harris had with Wayne County Deputy Sheriff Raymond F. Johnson on the Internet on May 19, 2000. In that conversation, Johnson pretended that he was a 14-year-old female named Ann. Using the screen name "Prom Queen 2003," Johnson entered a chat room and subsequently received a message from Harris, who was using the screen name of "ARH2." Harris and Johnson then conversed by typing messages and almost immediately exchanged photographs, with Harris sending his own picture and Johnson sending a "decoy" picture of a mature-looking girl, whose age and identity the officer did not know. After 30 minutes of typed conversation, Johnson suggested a meeting. Before the pair agreed to meet at a local McDonald's, Harris asked Johnson if he was sexually active, and Johnson (while posing as Ann) responded that he would like to start sex right away. Later that day, Harris went to the McDonald's at the planned time and was immediately arrested. Following the arrest, a search warrant was obtained for the residence of Harris, where evidence was seized.

The conversation between Harris and Johnson contained statements of sexual innuendo and sexual banter on the part of both parties, but Harris indicated at several different times that an immediate sexual relationship was not the purpose of his desire to meet with Johnson. For example, at 16:09 in the conversation, Harris stated that he did not want to do anything "fast tonight," but rather wanted to "just talk[] and such. I want to be your friend . . . and take all the time you want to be so, not hurry you or ever hurt you." (Conversation Tr.; App. at A-13.) After some indefinite talk about "sharing a bed" in the summer, and further general discussion of sex, Harris stated: "You don't have to do anything, not even meet, you know." (Conversation Tr. at 16:40; App. at A-19.) Despite these statements, Johnson repeatedly turned the conversation to the prospect of immediate sex, and Harris responded with interest but cautioned that they might want to wait, "might just sit and talk, or see a movie." (Conversation Tr. at 16:48; App. at A-21.) Harris also told Johnson that he promised "no hurt, no bother, nothing, if you say no." (Conversation Tr. at 17:03; App. at A-25.)

The affidavit for the search of the home and computer of Harris was based on information supplied by an officer who simply informed the magistrate that he had attended classes

and learned that pedophiles collect sexually explicit materials and retain them in their homes and computers. The search warrant affidavit is set out in full in the Appendix at A-28.

Harris filed a motion to quash and a motion to suppress the evidence seized during the execution of the search warrant. In support of these motions, Harris argued that because no minor was involved in the conversation he had with Johnson, he could not be validly charged with a violation of MCL 750.145c; MSA 28.342a(2). Harris also argued that the statute was unconstitutionally vague and overbroad because of the imprecision of the statute, because there was no way to determine what conduct constituted the "preparation" for child sexually abusive conduct. With regard to the content of the conversation, Harris contended that his words were insufficient to constitute a violation of the statute. Finally, Harris contended that the search warrant was not supported by probable cause to search his home.

On November 10, 2000, a hearing was held before the Honorable Ulysses W. Boykin, Judge of the Third Judicial Circuit Court, Criminal Division. Following oral argument by counsel, Judge Boykin denied each motion, ruling that "there does not have to have been an actual minor female in order for the crime to have occurred." (Motion Hearing at 12; App. at A-4.) Judge Boykin also upheld the validity of the statute, stating that, under the circumstances of the case, "a reasonable person could conclude that there would be a prohibition against

making these types of preparation, such as condoms and so forth in attempting to meet what he perceived to be a minor female." (Motion Hearing at 12-13; App. at A-4.) There was nothing in the record, however, to support these conclusions by Judge Boykin, as there was no testimony or other evidence supporting a finding of the possession of condoms or other contraceptive devices by Harris.

Using the procedure authorized by Michigan law, *see* MCL 600.309; MSA 27A.309 and MCR 7.203(B)(1), Harris then sought appellate review of the trial court's legal conclusions by filing an Application for Leave to Appeal in the Court of Appeals of Michigan. That application was denied on January 22, 2001. (App. at A-3.) Harris then appealed the Court of Appeals decision to the Michigan Supreme Court, which affirmed the decision of the lower court on June 12, 2001. (App. at A-1.)

REASON FOR GRANTING THE WRIT

I. THE MICHIGAN SUPREME COURT HAS REPEATEDLY REFUSED TO LIMIT THE APPLICATION OF MCL 750.145c(2); MSA 28.342a(2) IN A MANNER WHICH IS CONSISTENT WITH THIS COURT'S ESTABLISHED PRECEDENT HOLDING THAT IMPRECISE CRIMINAL STATUTES VIOLATE THE FIRST AND FOURTEENTH AMENDMENTS, THUS PERMITTING THE STATUTE TO UNCONSTITUTIONALLY INFRINGE UPON THE USE OF THE INTERNET AND UPON OTHER LEGITIMATE ACTIVITIES.

I.

The phenomenal growth in recent years in the use of the Internet has created a wide variety of new opportunities for individuals to acquire knowledge and to communicate with others. *See Reno v. American Civil Liberties Union*, 521 U.S. 844, 849-50 (1997). Through the use of "chat rooms," persons who have accessed the Internet can engage in instant conversations with other Internet users throughout the world, either openly or behind a cloak of anonymity. These Internet conversations are quintessential First Amendment activity.

In this case, Petitioner Alan Roger Harris was prosecuted for engaging in a conversation in a chat room on

the Internet. His crime, in the eyes of Wayne County, Michigan, law enforcement officers, was "prepar[ing] . . . to arrange for . . . child sexually abusive activity," in violation of MCL 750.145c(2); MSA 28.342a(2), by speaking with another individual in an Internet conversation and agreeing to meet with that individual. Specifically, the accusation against Harris rested on the content of one conversation with a police officer impersonating a 14-year-old female, which at times included sexual banter and professions of sexual interest by both parties to the conversation. A careful review of the transcript of the conversation reveals that while Harris may have engaged in some sexually oriented conversation with Officer Johnson, the conversation also contained clear statements by Harris disclaiming interest in immediate sexual activity or such activity in the near future. Thus, although the prosecution contended below that the conversation constituted the arranging for the preparation for illegal sexually activity, in fact the conversation did not support a belief that Harris had the actual intent to engage in sexual activity with a minor.

Indeed, the prosecution of Harris on the basis of his statements and conduct in this case provides a perfect example of the inherent flaw in MCL 750.145c(2); MSA 28.342a(2): Its wording is so imprecise, vague, and overbroad as to make it impossible to know what conduct is prohibited. Moreover, the vagueness and imprecision of the statute gives law enforcement officials in Michigan carte blanche to prosecute

individuals on the basis of conduct and speech which is far removed from any potential illegal sexual activity.

II.

This Court has long recognized that imprecisely worded criminal statutes violate the United States Constitution in two ways. First, a law that inhibits the exercise of First Amendment rights is overbroad and violative of the First Amendment if the impermissible applications of the law are substantial when judged in relation to the legitimate sweep of the statute. *City of Chicago v. Morales*, 119 S. Ct. 1849, 1857 (1999); *Broadrick v. Oklahoma*, 413 U.S. 601, 612-15 (1973). Second, even if an enactment does not reach a substantial amount of constitutionally protected conduct, it may be impermissibly vague because it fails to establish standards for the police and the public that are sufficient to guard against the arbitrary deprivation of liberty interests. *City of Chicago v. Morales*, 119 S. Ct. at 1857; *Kolender v. Lawson*, 461 U.S. 352, 358 (1983).

In recent years, this Court has recognized that it has a duty to enforce these important constitutional principles and has accepted for review a number of cases involving vague legislative enactments in various factual contexts. In *City of Chicago v. Morales*, for example, this Court determined that a city ordinance was impermissibly vague on its face and thus violated the Due Process Clause of the Fourteenth Amendment because it prohibited "criminal street gang

members" from "loitering" with one another or with other persons in any public place. The term "loiter" was defined in the ordinance to mean "to remain in any one place with no apparent purpose." This Court determined that because of this limiting, "no apparent purpose" language, the law did not have a sufficiently substantial impact on conduct protected by the First Amendment to render it unconstitutionally overbroad. However, the Court did find that the ordinance failed to provide the kind of notice that would enable ordinary people to understand what conduct it prohibits, because of the law's "failure to distinguish between innocent conduct and conduct threatening harm." 119 S. Ct. at 1859. This Court also found that the ordinance provided no guidelines to govern law enforcement, and effectively "provides absolute discretion to police officers to determine what activities constitute loitering." *Id.* at 1861.

Significantly, the Court emphasized in *City of Chicago v. Morales* that the ordinance could not be rescued by the courts, acting as interpreters of the meaning of the terms in the ordinance, noting that, as in all such vagueness cases, "[t]he Constitution does not permit a legislature to 'set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large.'" *Id.* (quoting *United States v. Reese*, 92 U.S. 214, 221 (1876)).

The *City of Chicago* case is but one of many decisions of this Court in the past few decades which have attempted to guide the courts with regard to the protection of citizens from the unfair application of vague and ambiguous laws. *See, e.g., Reno v. American Civil Liberties Union* (Communications Decency Act provision banning transmission of "indecent" material through the Internet was unconstitutionally vague); *Posters 'N' Things, Ltd. v. United States*, 511 U.S. 513 (1994) (federal criminal statute outlawing sale of drug paraphernalia was not vague because of scienter requirement and examples of prohibited items contained in statute); *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123 (1992) (a county ordinance prohibiting private demonstrations on public property without a valid permit, accompanied by a fee determined by the county administrator, was unconstitutionally vague because the permit process provided no standards by which to determine whether a permit should be issued, and what fee should be imposed); *Colautti v. Franklin*, 439 U.S. 379 (1979) (statute which required person performing abortion to make determination "based on his experience, judgment, or professional competence that the fetus is not viable," and to adopt that abortion technique "which would provide the best opportunity for the fetus to be aborted alive so long as a different technique would not be necessary in order to preserve the life or health of the mother" was unconstitutionally vague both as to its requirement for

determining viability and its requirement as to standard of care); *Kolender v. Lawson* (statute that required persons who loitered or wandered on streets to provide credible and reliable identification and to account for their presence when requested by peace officer under circumstances that would justify valid stop was unconstitutionally vague on its face because it encouraged arbitrary enforcement); *Papachristou v. Jacksonville,* 405 U.S. 156 (1972) (municipal ordinance criminalizing "persons wandering or strolling around from place to place without any lawful purpose or object" was void for vagueness); *Grayned v. City of Rockford,* 408 U.S. 104 (1972) (anti-noise ordinance found to satisfy due process requirements); *Palmer v. City of Euclid,* 402 U.S. 544 (1971) (municipal ordinance making criminal "any person who wanders about streets or other public ways or who is found abroad at late or unusual hours in the night without any visible or lawful business and who does not give a satisfactory account of himself" found to be unconstitutionally vague); *Coates v. Cincinnati,* 402 U.S. 611 (1971) (city ordinance making it criminal for three or more persons to "conduct themselves in a manner annoying to persons passing by" was unconstitutional on its face for vagueness).

These cases, each addressing vagueness in a different particular factual context, demonstrate the ongoing need for this Court to continue to guide the lower courts in the

application of the vagueness and overbreadth doctrines in different situations.

III.

The defects in the statute identified by the Court in *City of Chicago v. Morales* and the other recent vagueness cases decided by this Court are the same defects present in this case in MCL 750.145c(2); MSA 28.342a(2). The statute provides:

> A person who persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material, or a person who arranges for, produces, makes, or finances, or a person who attempts or prepares or conspires to arrange for, produce, make, or finance any child sexually abusive activity or child sexually abusive material is guilty of a felony, punishable by imprisonment for not more than 20 years, or a fine of not more than $100,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child, or that person has not taken reasonable precautions to determine the age of the child.

The vague and ambiguous phrase, "prepares . . . to arrange for," specifies no clearly identifiable conduct and gives no

guidance to either citizens or law enforcement officials as to what types of activities are prohibited by the statute. Indeed, by criminalizing the actions of someone who "prepares . . . to arrange for" a criminal activity, MCL 750.145c(2); MSA 28.342a(2) actually creates two separate levels of vagueness and ambiguity, as the language of the statute permits the conviction of not only individuals who prepare for criminal activity, but also those who take the even less affirmative or direct step of preparing to arrange for criminal activity. Such a broad and indefinite definition of criminal activity is essentially limitless and opens the door for the state to prosecute an individual based solely on his intent, without proof of a sufficient action taken by that individual which is designed to lead to the completion of a crime.

It is simply not possible, as the statute is written, to know what types of acts will constitute the "preparation" "to arrange for" child sexually abusive activity. Partly for that reason, discriminatory enforcement is a major concern with the statute, as the police have the broadest type of unlimited discretion in making arrests for activities which themselves are wholly innocent. This is precisely why this Court struck down the ordinance in *City of Chicago v. Morales*.

Moreover, unlike the statute in *City of Chicago v. Morales*, the statute in this case plainly impinges unconstitutionally on protected First Amendment freedoms, for the statute may easily be used to criminalize protected

communications by individuals which, while not a violation of any other statute, may be deemed by Michigan law enforcement officials to constitute "preparations" for child sexually abusive activity.

The overbreadth and vagueness of MCL 750.145c(2); MSA 28.342a(2) is apparent from a cursory examination of situations in which the terms of the statute could be applied. Contrary to established principles of criminal law, the broad and vague wording of the statute allows the prosecution of persons solely on the basis of their intent, without regard to whether they attempt to carry out that intent by engaging in actions which are proximate to any attempted child sexually abusive activity, and even permits prosecution and conviction of individuals for actions taken without any criminal intent at all. For example, under the reasoning adopted by the Michigan courts, any act of preparation toward the commission of child sexually abusive activity, however remote from any encounter with a real child, can constitute a felony. Thus, if an individual had formed a vague desire to engage in some form of sexual activity with a minor, but had no intention of ever acting on that desire, that individual could be prosecuted and convicted for violating MCL 750.145c(2); MSA 28.342a(2) by simply engaging in an innocent conversation with a child, or an officer impersonating a child, on the Internet. The state could, under the statute, deem that first step of initiating a conversation with a minor as a sufficient

preparatory act to warrant prosecution. It is not difficult to imagine that if the state managed to obtain some evidence of that individual's desires, perhaps by uncovering a diary entry through the use of a search warrant, the state could characterize the engaging in the conversation with a child as "preparing to arrange for" child sexually abusive activity, despite the individual's lack of any intention to act on his desires. By criminalizing any activity which may be characterized as a preparatory act, or an act which prepares to arrange for another act, the State of Michigan has transformed constitutionally protected communications into crimes. This is the essence of an overbroad statute.

In the same manner, a person without any intent to engage in any child sexually abusive activity can be unfairly subjected to prosecution and conviction under MCL 750.145c(2); MSA 28.342a(2) if his speech containing sexual innuendo may be interpreted as preparation for some sort of child sexually abusive activity. The present case falls within this second category. In such cases, an individual may engage in sexual banter anonymously on the Internet without any actual intent to engage in a prohibited sexual activity with a minor, yet find that he or she is subject to prosecution because an officer has construed his conversation as the preparation to arrange for an attempt to engage in sexual activity.

While under normal principles of criminal law, the individuals in these examples would not face prosecution

unless they had taken some affirmative physical action evidencing an actual attempt to commit a crime, *see* Wayne R. LaFave & Austin W. Scott Jr., *Handbook on Criminal Law* § 59, at 431 (1972), the lesser standard of the language of MCL 750.145c(2); MSA 28.342a(2), permitting prosecution for the mere preparation to arrange for a criminal act, would permit conviction for the conversations themselves.

The Michigan courts have repeatedly failed to recognize the infirmity of MCL 750.145c(2); MSA 28.342a(2) in the face of constitutional challenges. In declining to strike down the statute on vagueness grounds in this case, the Michigan courts relied upon the Michigan Supreme Court's ruling in *People v. Thousand,* No. 116967 (Mich. July 27, 2001), which declined to find the statute unconstitutional. This Court must now step in to direct the Michigan courts to follow the dictates of the First and Fourteenth Amendments and to find the language of MCL 750.145c(2); MSA 28.342a(2) unconstitutionally vague.

II. BY CRIMINALIZING THE MERE PREPARATION TO ARRANGE FOR CRIMINAL ACTIVITY, MCL 750.145c(2); MSA 28.342a(2) VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

"One of the basic premises of the criminal law is that bad thoughts alone cannot constitute a crime." LaFave & Scott, *supra*, § 59, at 431; *see also* F.B. Sayre, *Criminal Attempts*, 41 Harv. L. Rev. 821 (1928). Thus, it is has been well understood for centuries that while prosecuting an individual for an attempt to commit a crime is permitted under the policy justification that society has an interest in punishing persons who act to commit a crime but are apprehended before the crime is actually completed, such an attempt must be "more than an act of preparation." LaFave & Scott, *supra*, § 59, at 431. While the commentators have noted the sometimes difficult issue of drawing a line between preparation and attempt, all have agreed that "[s]omething more than mere preparation or planning is essential." Sayre, *supra*, 41 Harv. L. Rev. at 843 (discussing common-law history of criminalization of attempts).

Prior to the enactment of MCL 750.145c(2); MSA 28.342a(2), the Michigan Supreme Court, like all other state

courts, contrasted acts of preparation from acts constituting attempts:

> Mere preparation is distinguished from an attempt in that the former consists of making arrangements or taking steps necessary for the commission of a crime, while the attempt itself consists of some direct movement *toward commission of the crime* that would lead immediately to the completion of the crime.

People v. Jones, 443 Mich. 88, 504 N.W.2d 158, 164 (1993) (emphasis added); *see also People v. Stapf*, 155 Mich. App. 491, 400 N.W.2d 656 (1986) (to prove crime of attempt, evidence must show specific intent to commit crime and overt act going beyond mere preparation toward committing crime); *People v. Frost*, 148 Mich. App. 773, 384 N.W.2d 790 (1985) (essential elements of attempt are intent to do act or bring about certain consequences which in law would amount to crime; and act in furtherance of that intent which goes beyond mere preparation). The Michigan Supreme Court stated in *People v. Coleman*, 350 Mich. 268, 86 N.W.2d 281, 285 (1957), that mere preparation to commit a crime could not be criminalized:

> "The law," as Holmes well said (The Common Law, 68), "does not punish every act which is done with the intent to bring about a crime." The purchase of a fountain pen intended for forgery would doubtless be deemed merely an

> act of preparation. Likewise, even the purchase of a hunting rifle, secretly intended for the murder of the neighbor, though equally useful for the hunting of deer. . . .
>
> . . . "There must be at least some appreciable fragment of the crime committed, and it must be in such progress that it will be consummated unless interrupted by circumstances independent of the will of the attempter."

(Quoting 1 Charles E. Torcia, *Wharton's Criminal Law* 280 (12th ed. 1978).)

The statute at issue in this case is an unprecedented effort[1] to impose criminal punishment on thoughts and on activities which heretofore have universally been understood to fall outside the sanctions of the criminal laws. By criminalizing acts which only "prepare to arrange for" criminal behavior, the State of Michigan has opened the door to prosecutions based on solely subjective standards in

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[1]Research has revealed no statute from any other state which permits the imposition of criminal sanctions for a person who "prepares to arrange for" criminal activity.

derogation of the well-established common-law rules regarding attempts.

The historical distinction between attempts and mere preparation is rooted in the requirement that individuals may be convicted only for their criminal actions and not for their criminal state of mind. The law of attempt ensures that the particular action which transforms a criminal intent into a crime is one which actually is directed toward the completion of a crime, rather than one which is so ambiguous or remote from the completion of a crime as not to be indicative of the intention to consummate the crime. This longstanding principle was stated by a former Chief Justice of the Michigan Supreme Court in *People v. Youngs*, 122 Mich. 292, 81 N.W. 114, 116 (1899), as follows:

> The two important and essential facts to be established *to convict a person of an offense*, are: First, an intent to commit the offense; and second, some overt act, consequent upon that intent, *towards its commission*. So long as the act rests in bare intention, it is not punishable. "Cogitationis poenam nemo patitur." It is only when the thought manifests itself by an outward act *in or towards the commission of an offense, that the law intervenes to punish. . . . These are fundamental legal principles.*

(Grant, C.J., dissenting opinion (emphasis added).)

This Court has previously recognized that while a unanimous historical adherence to common-law practice does not conclusively establish it as a requirement of due process, such an adherence does "reflect a profound judgment about the way in which law should be enforced and justice administered." *In re Winship*, 397 U.S. 358, 362 (1970) (quoting *Duncan v. Louisiana*, 391 U.S. 145, 155 (1968)). In *Winship*, this Court found that the established common-law practice of requiring guilt to be proven by the "beyond a reasonable doubt" standard was strong proof that such a standard was required by the Due Process Clause.

In the same way, this Court must find that the long-established practice of the common law with regard to the degree of action needed to establish guilt for an attempt to commit a crime expresses values and principles which must be protected by the Due Process Clause of the Fourteenth Amendment. Accordingly, this Court must find that the Due Process Clause precludes states from penalizing the mere preparation or arranging for the commission of a crime.

III. A SEARCH WARRANT AFFIDAVIT WHICH RELIES SOLELY UPON BOILERPLATE LANGUAGE WHICH PURPORTS TO SHOW WHAT EXPERTS BELIEVE ABOUT PEDOPHILES IS INSUFFICIENT TO ESTABLISH PROBABLE CAUSE TO SEARCH AN INDIVIDUAL'S HOME.

The Fourth Amendment to the United States Constitution permits law enforcement officials to search private residences only on the authority of a search warrant supported by probable cause. *Illinois v. Gates*, 462 U.S. 213 (1983). It is well established that probable cause to search requires a "substantial basis" for concluding that a search would uncover evidence of wrongdoing. *Id.* at 236.

The search warrant in this case clearly was not supported by probable cause, for there were no facts provided in the affidavit to support a search of his home and computer. The Fourth Amendment's particularity requirement mandates a showing that there is probable cause to search the place named in the warrant, and thus probable cause to believe that a person has committed a crime does not automatically provide probable cause to search his residence. *Zurcher v. Stanford Daily*, 436 U.S. 547, 556 (1978); *United States v. Savoca*, 739 F.2d 220 (6th Cir. 1984), *on reh'g*, 761 F.2d 292 (6th Cir.), *cert. denied*, 474 U.S. 852 (1985). The only basis for the issuance

of the warrant in this case was the conjecture on the part of one detective that Harris had "the personality of persons with inclination toward sexual activity with minors and child pornography," and the further conjecture that such persons collect and retain sexually explicit materials depicting minors that they use for their own sexual gratification. (Search Warrant and Affidavit at 2; App. at A-31.)

The affidavit thus used the arrest of Harris, itself undertaken on the basis of a single conversation which was at the most ambiguous, together with unsubstantiated gross generalities about personalities of certain persons, to allow police to invade the privacy of Harris and search every area of his home for anything which "appears to relate to the exploitation of children." Permitting law enforcement officers to make a dubious arrest, and then to bootstrap that arrest through unsubstantiated opinions of an officer into a sweeping authority to search all areas of the residence of a defendant, simply cannot be squared with accepted Fourth Amendment principles.

The Fourth Amendment requires that magistrates must make probable cause determinations on the basis of actual facts presented by affiants, and not on the basis of an affiant's mere conclusions. *Illinois v. Gates*. While some courts have upheld warrants based on such conclusory generalizations, *see United States v. Lacy*, 119 F.3d 742 (9th Cir. 1997); *United States*

v. Rabe, 848 F.2d 994 (9th Cir. 1988), other courts have properly recognized that the opinion of a police officer based on his experience involving similar crimes is not enough by itself to provide probable cause to search. For example, in *United States v. Schultz*, 14 F.3d 1093 (6th Cir. 1994), the court held that officers did not have probable cause to search the defendant's safety deposit box on the basis of an officer's affidavit that, based on his training and experience, he believed that drug records would be there. The court emphasized that an officer's training and experience cannot substitute for a lack of an evidentiary basis: "To find otherwise would be to invite general warrants authorizing searches of *any* property owned, rented, or otherwise used by a criminal suspect—just the type of broad warrant the Fourth Amendment was designed to foreclose." *Id.* at 1098 (court's emphasis); *see also United States v. Ruiz*, 822 F. Supp. 708 (D. Kan. 1993) (warrant based on officer's conclusions regarding "common financial and record-keeping practices of drug traffickers" was insufficient to provide probable cause to search defendant's residence for records); *United States v. Gomez*, 652 F. Supp. 461 (E.D.N.Y. 1987) (while the issuing magistrate is entitled to consider and credit the affiant's specialized knowledge, such knowledge alone does not provide probable cause to search); *State v. Mische*, 448 N.W.2d 415 (N.D. 1989) (search warrant affidavit did not show probable cause to search home of defendant accused of making two drug sales; officer's statement that in

his experience and training "individuals who routinely deal or sell controlled substances normally keep a supply on hand for sale and do maintain records or other documentation of their controlled substances" at their residence was insufficient to provide probable cause).

The decision of the Michigan courts below directly conflicts with these rulings and with the established precedent of this Court. The record shows that the officers in this case never provided to the magistrate any reason why a search of Harris's residence would reveal any evidence of criminal activity. Harris did not exhibit any child pornography or any other sexual material on the Internet from his home, did not tell anyone that he had child pornography, did not express an interest in child pornography, and never indicated any reason why officers should have expected to find child pornography in his home. Harris never engaged in any sexual activity with a minor, and thus never photographed or videotaped any such activity. There was, therefore, no probable cause to find any incriminating evidence, and there was also no reason to believe any incriminating evidence would be found in Harris's home.

Therefore, this Court must uphold the particularity requirement of the Fourth Amendment in this case and direct the Michigan courts to find that all evidence seized pursuant to the search of Harris's home, as well as all evidence derived from evidence taken in the search, must be suppressed.

CONCLUSION

For all of the foregoing reasons, the Petitioner, Alan Roger Harris, requests this Court to grant his Petition for Writ of Certiorari.

Respectfully submitted,

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(248) 569-0888

No.

In The
Supreme Court Of The United States

ALAN ROGER HARRIS,

Petitioner,

v.

STATE OF MICHIGAN,

Respondent.

On Petition For Writ Of Certiorari
To The Michigan Supreme Court

Appendix

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TABLE OF CONTENTS

Page

Michigan Supreme Court Order dated June 12, 2001 ..... A-1

Michigan Court of Appeals Opinion dated January 22, 2001 ..... A-3

Trial Court Ruling [excerpt] A-4

Excerpt from Harris's Application to Michigan Supreme Court for Leave to Appeal A-5

Transcript of Internet Conversation Between Harris and Johnson A-6

Search Warrant Affidavit A-28

Order

Entered: June 12, 2001

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

118596

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SC: 118596
COA: 231538
Wayne CC: 00-009199

ALAN ROGER HARRIS,

Defendant-Appellant.

On order of the Court, the application for leave to appeal from the January 22, 2001, decision of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should now be reviewed by this Court.

Kelly, J., would grant leave to appeal.

RECEIVED
6/15/01

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 12, 200*1*

s/_____
Deputy Clerk

ORDER OF THE COURT OF APPEALS

Court of Appeals, State of Michigan

ORDER

	Helene N. White
People of MI v Alan R. Harris	Presiding Judge
Docket No. 231538	Michael J. Talbot
LC No. 00-009199	Brian K. Zahra
_____	Judges

The Court orders that the application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

s/_____
Presiding Judge

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

January 22, 2001
Date

s/_____
Chief Clerk

[Trial Court Ruling – Excerpt]

As to the first issue that was raised in the motion, I think there's no question, the Court believes it is controlling by People versus Styles and I would find that there does not have to have been an actual minor female in order for the crime to have occurred.

With respect to the second argument, and that is the statute under which the Defendant is being prosecuted as constitutionally vague, I have revisited that statute again in this case and have looked at it in similar cases that have been brought and I think that looking at the types of activities that went on, the discussions in this chat room that the Defendant participated in, and indicating what he was going to bring to this meeting in the way of condoms and birth control, while in and of themselves possession of those items I think in the context of how they came up in the discussions would indicate that the Defendant was or at least for purposes of being bound over is sufficient information to determine that he was going to attempt to engage in some type of prohibited sexual activity with the need for it.

Under those circumstances, I'm sure a reasonable person could conclude that there would be a prohibition against making these types of preparation, such as condoms and so forth in attempting to meet what he perceived to be a minor female. I didn't see how anyone – a reasonable person

could conclude that such conduct would not be prohibited. Preparation was talked about as to that.

As to the third argument that the search warrant wasn't supported by any probable cause, and accepting the argument of the People that since the activity here was conducted using a computer over the Internet, that evidence of that illegal preparation and facilitation would certainly appear in a computer that was used from the Defendant's home. So, on that basis I would find that there is probable cause to have executed the search warrant and seize the items from the Defendant's home. So, on all the issues the Court rules that the Motion To Quash The Information and the Motion To Suppress are denied.

[Excerpt from Harris's Application to Michigan Supreme Court for Leave to Appeal]

TABLE OF CONTENTS

ARGUMENT

I. THIS COURT MUST ORDER THE DISMISSAL OF THE CHARGE AGAINST HARRIS BECAUSE THE CRIME OF CHILD SEXUALLY ABUSIVE ACTIVITY REQUIRED AS AN ELEMENT THE EXISTENCE OF A MINOR VICTIM, WHICH CANNOT BE SHOWN IN THIS CASE 4

II. MCL 750.145c(2); MSA 28.342a(2), WHICH MAKES IT A CRIME TO "PREPARE . . . TO ARRANGE FOR . . . CHILD SEXUALLY ABUSIVE ACTIVITY," IS UNCONSTITUTIONALLY VAGUE AND PERMITS CONVICTION FOR INNOCENT AND AMBIGUOUS CONDUCT17

III. THE SEARCH WARRANT USED TO SEARCH THE DEFENDANT'S RESIDENCE WAS NOT SUPPORTED BY PROBABLE CAUSE24

[Transcript of Internet Conversation Between Harris and Johnson]

Session Start: Fri May 1915:21:10 2000
[15:21] Session Ident: ARH2 (ARH@ip141.ann-arbor4.mi.pub-ip.psi.net)
[15:21] <ARH2> hi there
[15:21] <promqueen2003> hi
[15:21] <ARH2> how are you today?
[15:23] <ARH2> too ho hum for you? i understand...
[15:29] <promqueen2003> good
[15:29] <promqueen2003> and u
[15:29] <ARH2> the same, thanks...
[15:29] <ARH2> you are 15?
[15:29] <promqueen2003>14
[15:29] <ARH2> going to be the queen in 3 yrs?
[15:30] <promqueen2003> hope so
[15:30] <ARH2> cool...i am a lot older, as you probably guessed...

[15:30] <ARH2> what do you look like?
[15:30] <promqueen2003> asl?
[15:30] <ARH2> 50/m/mich
[15:30] <promqueen2003> thats ok
[15:30] <ARH2> thanks...
[15:31] <promqueen2003> i am from mich to
[15:31] <ARH2> cool...
[15:31] <ARH2> got a picture?
[15:31] <ARH2> here is mine
[15:31] <promqueen2003> sure
[15:32] <ARH2> may i see it please?
[15:32] <promqueen2003> hang on
[15:32] <promqueen2003> one sec
[15:33] <ARH2> ok
[15:36] <promqueen2003> u r cute
[15:36] <promqueen2003> u don't look 50
[15:36] <ARH2> thanks...i don't act it either
[15:36] <ARH2> lol
[15:3p] <promqueen2003> cool
[15:38] <ARH2> :) what a pretty lady, got any more for me?
[15:38] <promqueen2003> no that is my only one ;
[15:38] <promqueen2003> sorry
[15:38] <promqueen2003> i had to go to kinkos for that one
[15:40] <ARH2> :) if you have other, mail them to me, i'll scan them and return
them. ok?
[15:40] <ARH2> what do you like to do?
[15:41] <promqueen2003> thanks
[15:41] <promqueen2003> i like to have fun
[15:41] <ARH2> such as?
[15:42] <promqueen2003> all kinds of stuff

[15:42] <ARH2> :) tell me what, specifically, if you will
[15:42] <promqueen2003> there is so much
[15:43] <promqueen2003> i like basketball
[15:43] <promqueen2003> volley ball
[15:43] <promqueen2003> movies
[15:43] <promqueen2003> concerts
[15:43] <promqueen2003> dancing
[15:43] <ARH2> yes, i know, start with your favorite then, and then we can add as we gfo along
[15:43] <promqueen2003> rollerblading
[15:43] <promqueen2003> i really dont have a favorite
[15:43] <ARH2> cool things...and biys or men?
[15:44] <ARH2> boys
[15:44] <promqueen2003> i like to do different things
[15:44] <promqueen2003> i like this one boy
[15:44] <ARH2> yes...
[15:44] <promqueen2003> but i dont think he likes me
[15:44] <ARH2> why not?
[15:44] <promqueen2003> i dont know
[15:44] <promqueen2003> r u married
[15:45] <ARH2> mmm, do you ignore him? or make him feel silly?
[15:45] <ARH2> no, single
[15:45] <promqueen2003> why
[15:45] <promqueen2003> u r very handsome
[15:45] <ARH2> i was married for 9 yrs, she stopped loving me, so i left...
[15:45] <promqueen2003> bummer
[15:45] <promqueen2003> any kids
[15:46] <ARH2> yes, lauren is 10 1/2, brent ias 8
[15:46] <ARH2> what about your family?

[15:46] <promqueen2003> do they live with u
[15:46] <promqueen2003> i just live with my mom
[15:46] <ARH2> no, but will spend most of the summer up here, want to cme play too?
[15:46] <promqueen2003> my dad left long ago
[15:46] <ARH2> what is she like?
[15:47] <promqueen2003> that would be fun
[15:47] <promqueen2003> where in mich
[15:47] <ARH2> ann arbor
[15:47] <promqueen2003> Go Blue
[15:47] <promqueen2003> lol
[15:47] <ARH2> lol, i went to michigan state, long ago, but worlk for the u of m now
[15:48] <promqueen2003> sweet
[15:48] <ARH2> :) mom is sweet?
[15:48] <promqueen2003> my cousin graduated from msu
[15:48] <ARH2> cool...
[15:48] <ARH2> where will you go?
[15:48] <promqueen2003> i dont know yet
[15:48] <ARH2> ok...what does mom look like?
[15:49] <promqueen2003> a little
[15:48] <promqueen2003> they say i look more like my dad
[15:49] <ARH2> ok...
[L5:50] <ARH2> what would you like to have happen in your life, ann?
[15:50] <promqueen2003> just to be happy and make other s happy
[15:50] <ARH2> ok, how do you think you could be happy, and what would you do to help others be that way?
[15:51] <promqueen2003> just to be treated nice
[15:51] <promqueen2003> and i would do the same

[15:51] <ARH2> ok, want a nice friend?
[15:51] <promqueen2003> i am always looking for nice friends
[15:51] <ARH2> ok, i will try to be one, ok?
[15:51] <ARH2> but you want more, too, right?
[15:52] <promqueen2003> yes
[15:52] <ARH2> what more do you want?
[15:52] <promqueen2003> I want to be married and have kids
[15:52] <ARH2> ok, when>?
[15:52] <promqueen2003> i dont know
[15:52] <promqueen2003> i guess when i find the right man
[15:53] <ARH2> ok...what would mom say to you meeting me, and introducing her?
[15:53] <ARH2> :)))
[15:53] <promqueen2003> i dont know
[15:53] <ARH2> i understand...
[15:53] <promqueen2003> i would like to meet u
[15:53] <ARH2> are you sexually active yet, ann?
[15:54] <ARH2> i would like to meet you too...
[15:54] <promqueen2003> no i am a virgin
[15:54] <ARH2> ok...going to stay that way?
[15:54] <promqueen2003> no i dont want to
[15:54] <ARH2> till you are lolder, i mean, not forever
[15:54] <promqueen2003> i just dont want to sleep with an one
[15:54] <ARH2> you wnt to start sex right away?
[15:55] <promqueen2003> i feel i am ready
[15:55] <ARH2> what would you like to try first/
[15:55] <promqueen2003> i am not sure
[15:55] <ARH2> ok, have you touched a man>?
[15:56] <promqueen2003> kind ogf
[15:56] <ARH2> mmm, kind of?
[15:56] <ARH2> :)

[15:57] <ARH2> care to elaborate?
[15:57] <promqueen2003> brb
[15:57] <ARH2> ok
[15:59] <promqueen2003> dont leave
[15:59] <promqueen2003> one more minute
[15:59] <ARH2> i won;t...want a number to call, if you lose me?
[16:00] <promqueen2003> i am back
[16:00] <ARH2> hi ann...:)
[16:00] <promqueen2003> what is your name?
[16:00] <ARH2> alan
[16:01] <promqueen2003> hi alan
[16:01] <ARH2> hi, nice to meet you
[16:01] <promqueen2003> nice to meet u
[16:01) <promqueen2003> you r very swweet
[16:01] <ARH2> what kind of man do you want to be your first, ?
[16:02] <promqueen2003> someone who will treat me nice
[16:02] <ARH2> i try to be sweet, promise
[16:02] <promqueen2003> ok
[16:02] <ARH2> mmm, i qualify then...:)
[16:02] <promqueen2003> yes
[16:02] <ARH2> :)
[16:02] <promqueen2003> u r handsome and u r very sweet
[16:02] <ARH2> so, i better not try to meet your mom, just give myself to you., right?
[16:03] <ARH2> thanks for the compliments...
[16:03] <promqueen2003> that would b ok
[16:03] <promqueen2003> she has a boyfriend anyways
[16:03] <ARH2> ok, good...
[16:03] <ARH2> how could we meet,

[16:03] <ARH2> ?
[16:03] <promqueen2003> u tell me
[16:03] <ARH2> near your house, but not at it?
[16:03] <promqueen2003> ok
[16:04] <promqueen2003> i live in inkster
[16:04] <ARH2> mmm, up to you, a mall, for lunch, tonight, for a movie?
[16:04] <ARH2> close to me,
[16:04] <promqueen2003> there is a mcdonalds by my house i can walk to
[16:04] <ARH2> ok, where, what is the street intersection...and what time?
[16:05] <promqueen2003> it is on michigan ave
[16:05] <promqueen2003> and merriman
[16:06] <ARH2> ok, what tune would work for you...can you get out tonight, and be ok with all this?
[16:06] <ARH2> tune=time
[16:06] <promqueen2003> sure
[16:06] <promqueen2003> my mom is gone to work untillater
[16:06] <promqueen2003> what would we do
[16:07] <ARH2> we would talk, then maybe take a walk...
[16:07] <ARH2> lots to talk about, you want a friend first, right???
[16:07] <promqueen2003> that would b nice
[16:07] <ARH2> is there a mall mearby?
[16:07] <promqueen2003> sure
[16:07] <promqueen2003> not one i can get to
[16:08] <ARH2> ok, ytou could decide later, if ever, if you want to ride with me anywhere...
[16:08] <promqueen2003> where would u take me?
[16:08] <ARH2> a movie, or somewhere safe

[16:08] <promqueen2003> safe
[16:09] <promqueen2003> what do u mean
[16:09] <ARH2> nothing fast tonight, , just talking and such
[16:09] <ARH2> i want to be your friend...anmd take all the time you want to be so, not hurry you or ever hurt you
[16:10] <promqueen2003> thats is so nice
[16:10] <ARH2> i want to make friends, and have you around for a long time, ann, not scare or be a bother to you
[16:11] <promqueen2003> that is soooo sweet
[16:11] <ARH2> would yo like to talk on the phone for a few minutes, berfore we go to the mcdonald's?
[16:11] <promqueen2003> my mom dosnt like wen i give my number out
[16:11] <promqueen2003> not even to my friends
[16:11] <promqueen2003> she is like that
[16:11] <promqueen2003> sorry
[16:11] <ARH2> i understand, want to try calling me for a minute, or just meet there?
[16:11] <promqueen2003> we could just meet
[16:12] <ARH2> i understand, it is a pain to have to change the number...:)
[16:12] <promqueen2003> i am not sure but i think so
[16:12] <ARH2> ok., are you sure? i don;t mind driving to find youhave changed your mind...but would really like to meet
[16:12] <promqueen2003> i am a little nervous
[16:12] <ARH2> i know. so am i.,..
[16:13] <ARH2> after all, we are contemplating something thatmay change our lives
[16:13] <promqueen2003> u wont hurt me will u
[16:13] <ARH2> no...
[16:13] <ARH2> i won;t...others might though,

[16:13] <promqueen2003> i know
[16:13] <promqueen2003> there r some freaks out there
[16:14] <ARH2> yes...: (
[16:14] <ARH2> i am not one, but the next guy COULD be, : (
[16:14] <promqueen2003> i know
[16:14] <promqueen2003> lets chat somemore and i will decide
[16:14] <promqueen2003> is that ok?
[16:14] <ARH2> yes, of course...
[16:14] <promqueen2003> ok
[16:14] <promqueen2003> u r very sweet
[16:15] <ARH2> do you have some other picture to bring, if we meet, so that i can scan them for you?
[16:15] <promqueen2003> yes
[16:15] <ARH2> ok, want to bring them tonight?
[16:15] <promqueen2003> i would have to look for them
[16:15] <promqueen2003> i will try
[16:15] <ARH2> what time does mom ecpect you home tonight?
[16:15] <ARH2> np, if not today, next time
[16:16] <promqueen2003> ok
[16:16] <ARH2> do you always use this nick?
[16:17] <promqueen2003> most of the time
[16:17] <promqueen2003> i get kicked out of a bunch of rooms all the time
[16:17] <ARH2> ok, so i can put in it into notify...
[16:17] <ARH2> ljealousy gets them nowhere
[16:18] <promqueen2003> what is that
[16:18] <ARH2> a list of those you want to know when they are online.,..
[16:18] <promqueen2003> oh i did not know this could do that
[16:19] <ARH2> yes...see the icons across the top?

[16:19] <ARH2> see the one that says no?
[16:20] <ARH2> left click it, a box opens, right click the box, and add me to the spot
[16:20] <ARH2> mmm, first slide down to options, soirry
[16:20] <ARH2> here?
[16:21] <promqueen2003> sweet
[16:21] <promqueen2003> thatnks
[16:21] <ARH2> you are most welcome...
[16:22] <ARH2> when does mom come home? and do youneed to be there, when she gets there?
[16:22] <promqueen2003> she gets in kind of late
[16:22] <ARH2> ok, so we are not going to be hurried?
[16:22] <promqueen2003> no i dont have to be here as long as i leave a note as to where i am
[16:22] <ARH2> but will get you home safe, and sound
[16:23] <ARH2> ok, cool...
[16:23] <promqueen2003> do u have a girlfriend
[16:23] <ARH2> no...
[16:23] <promqueen2003> why not
[16:23] <ARH2> want to be her?
[16:24] <promqueen2003> would u make me your girlfriend
[16:24] <ARH2> it will be fine for me...we can tell your mom you are sitting for my kids, this summer, when really, you can share my bed, if you want, ok?
[16:24] <promqueen2003> that would b nice
[16:25] <ARH2> i won;t make you an\ything, you can choose to be something, ok?
[16:25] <promqueen2003> u will love me even if i am younger than u
[16:25] <ARH2> yes, why not?

[16:25] <ARH2> would you love me, even though, i am so much older than you???
[16:26] <promqueen2003> yes very much
[16:26] <ARH2> ok, we can certainly try then. ok?
[16:26] <promqueen2003> r u sure we can share a bed?
[16:26] <promqueen2003> have u ever been with a virgin?
[16:26] <ARH2> why not? who will tell? my kids won't...yes, long ago...
[16:27] <ARH2> i am more concerned with what we have to say to your mom, when and if...:)
[16:27] <promqueen2003> i am sure we can figure out something
[16:28] <ARH2> ok, if you want to, i am game too
[16:28] <promqueen2003> have u ever been with a 14 yr old befrore?
[16:28] <ARH2> no
[16:28] <ARH2> the youngest i have ever known was 16, when i was 27
[16:28] <promqueen2003> do u like young girls
[16:28] <ARH2> we will lid to a lot of people for a long time, if you are ok with the idea
[16:29] <promqueen> i would like an older man
[16:29] <promqueen2003> more mature
[16:29] <ARH2> i like all women, and young are lovelier than old, but all are women
[16:29] <promqueen2003> dont act silly all the time
[16:29] <ARH2> although, the older we get, the sillier we are, it seems, some days
[16:29] <promqueen2003> i guess some days r ok
[16:29] <ARH2> we can be as mature as we want, though, you and i

[16:29] <promqueen2003> not every day
[16:29] <ARH2> ok, good..:}
[16:29] <promqueen2003> i do not know anything about sex
[16:29] <promqueen2003> is that ok
[16:30] <ARH2> no, not even often, just sometimes...want to wrestle? lol
[16:30] <ARH2> of course, i understand that you don;t...
[16:30] <ARH2> we would have to do lots to protect you, from pregnancy, and injury
[16:30] <promqueen2003> yes i do not want any babys now
[16:31] <ARH2> no, not for a long time...:)
[16:31] <ARH2> school being finished would be nice too
[16:31] <ARH2> i'll make you study hard.,,,lol
[16:31] <promqueen2003> what will i study?
[16:32] <promqueen2003> if school is out
[16:32] <ARH2> not sure, about in college, but just the normal subjects in high schoo, ok?
[16:32] <ARH2> mmm, if schoo is out, you w111 be working, watching my kids...:)
[16:32] <promqueen2003> hehehe
[16:32] <promqueen2003> when was the last time u had sex?
[16:33] <ARH2> not that long ago.. last month
[16:33] <promqueen2003> with who
[16:33] <ARH2> but the lady and i are no longer together
[16:33] <ARH2> a lady from indiana...
[16:33] <ARH2> we thought we fit well, but she and i differ on what is going to happen in life...
[16:33] <promqueen2003> how did u meet her
[16:33] <ARH2> normal thing, just different views
[16:34] <ARH2> from a dating service
[16:34] <promqueen2003> really

[16:34] <ARH2> yes, it is called webpersonals, online...
[16:35] <promqueen2003> cool
[16:35] <promqueen2003> how many times did u go out
[16:35] <ARH2> it is, but it is a lot of liarws too...:)
[16:35] <ARH2> 3 times...
[16:35] <promqueen2003> sex every time
[16:36] <ARH2> she came up to meet, and stayed for the weekend each time
[16:36] <ARH2> yes...
[16:36] <promqueen2003> was she pretty
[16:36] <ARH2> we are horny people. just not the right hornmy people for each other...:)
[16:36] <ARH2> not really, but not bad...
[16:36] <ARH2> you are prettier,
[16:36] <ARH2> :)
[16:36] <promqueen2003> i am horny preople to
[16:36] <promqueen2003> lol
[16:36] <ARH2> do you masturbate a lot?
[16:36] <promqueen2003> sometimes
[16:36] <ARH2> lol
[16:36] <promqueen2003> do u
[16:37] <ARH2> ok...want to for me later tonight? let me watch?
[16:37] <ARH2> yes, every day
[16:37] <promqueen2003> really
[16:37] <promqueen2003> every day
[16:37] <promqueen2003> u want me to masterbate for u
[16:37] <ARH2> yes, i want it a lot, but don;t go cruising bars to pick up women, i would not want to see again...
[16:37] <ARH2> yes, i do, will you?
[16:37] <promqueen2003> will that make u horny

[16:38] <ARH2> yes, and wouls touching or seeing me, make you horny too? [16:38] <promqueen2003> hehehe
[16:38] <promqueen2003> i think so
[16:38] <promqueen2003> i would do that for u
[16:38] <ARH2> :)
[16:39] <promqueen2003> i think u r cute and i would like to make u happy
[16:39] <ARH2> please, that would be nice
[16:39] <ARH2> thank you, i want to make you happy too..and treat you well
[16:39] <promqueen2003> would i have to do anything else besides masterbate
[16:40] <ARH2> up to you, always up to you, you don;t HAVE to do anything, not even met, you know
[16:40] <ARH2> meet
[16:40] <promqueen2003> i know
[16:40] <promqueen2003> but i would like to meet u
[16:40] <promqueen2003> what would u do while i played with myself
[16:41] <ARH2> why don;t we meet and see...maybe just watch, maybe whip it out and come all over...:)
[16:41] <promqueen2003> oooh
[16:41] <promqueen2003> would u put it in me?
[16:41] <ARH2> want that?
[16:41] <ARH2> mmm, first date?
[16:41] <promqueen2003> yes
[16:41] <ARH2> :)
[16:41] <promqueen2003> i think
[16:41] <promqueen2003> yes
[16:41] <ARH2> what about birth contr\ol?
[16:42] <promqueen2003> i do not have any do u

[16:42] <ARH2> i hate condoms...but will do what we need to do
[16:42] <promqueen2003> yes i would like to be safe
[16:42] <ARH2> i have some film...it melts inside you and prevents conception, want to try that?
[16:42] <promqueen2003> ok, if u think it is safe
[16:43] <ARH2> yes, it is, for that...but where, want me to bring you back here?
[16:43] <ARH2> or try it somewhere near your house?
[16:43] <ARH2> or what?
[16:43] <promqueen2003> it is up to u
[16:43] <promqueen2003> i dont know where to go
[16:44] <promqueen2003> plus u have the car
[16:44] <ARH2> mmm, well, we can give it a try, i am oncall tonight, and must be able to get to the airport within an hour, after 7 pm...and could not do that, and get you hoime, IF they call me...so why don;t we try to play in that area for a bit, and maybe have intercourse, as soon as we can, maybe the weekend, ok>?
[16:45] <promqueen2003> which airport
[16:45] <ARH2> ann arbor airport..
[16:45] <promqueen2003> what do u do thre
[16:45] <ARH2> i fly the u of mich's helicopters for the hospital
[16:45] <promqueen2003> sweet
[16:45] <promqueen2003> can u take me for a ride one day
[16:45] <ARH2> ut beats working for a living...
[16:46] <promqueen2003> that would b fun
[16:46] <ARH2> one day, yes. but maybe not in the u's aircraft, becasue you have to be dying to get onboard....:)
[16:46] <ARH2> yes...

[16:46] <ARH2> want me to get on the road to you?
[16:46] <promqueen2003> where will we go
[16:47] <promqueen2003> sorry about the questions
[16:47] <ARH2> just have a mcdfonald's , then see what you think, no pressure, and up to you
[16:47] <promqueen2003> i just want to be sure about this'
[16:47] <ARH2> i don;t mind, ask a million wuestions, if each takes a minute, i get a million minutes with you
[16:47] <promqueen2003> awww sooo sweet
[16:47] <ARH2> :)
[16:47] * ARH2 bows
[16:47] <ARH2> milady...
[16:47] <promqueen2003> do u want to have sex with me today?
[16:48] <promqueen2003> awwww
[16:48] <ARH2> i would love to, but let;s se if we even can, ok? might just sit and talk, or see a movie...
[16:48] <promqueen2003> what should i wear?
[16:48] <ARH2> and play if we can...no hurry for that weither, with a lifetime ahead
[16:49] <ARH2> mnmm...it;s cool out, so a raincoat, and maybe a skirt, and a light top...
[16:49] <ARH2> nopanties, though, ok?
[16:49] <ARH2> :)
[16:49] <ARH2> no panties
[16:49] <ARH2> or would that feel strange?
[16:49] <promqueen2003> no that is ok
[16:49] <ARH2> ok...
[16:49] <ARH2> what would YOU like to wear?
[16:49] <promqueen2003> i can wear that
[16:50] <promqueen2003> that would b fine

[16:50] <ARH2> ok, what time, i need about an hour...
[16:50] <ARH2> 6 pm pk?
[16:50] <ARH2> ok
[16:51] <promqueen2003> hang on let me think
[16:51] <ARH2> ok, NO hurry, take all the time you need
[16:51] <promqueen2003> u r so very sweet
[16:51] <promqueen2003> can u bring something to drink?
[16:51] <ARH2> i am so very a man, who does NOT want you afraid of me, and will NEVER hurt you...that;ws all
[16:52] <ARH2> such as?
[16:52] <promqueen2003> beer maybe
[16:52] <promqueen2003> if that is ok
[16:52] <promqueen2003> or wine cooler
[16:52] <ARH2> mmm, i think i better wait on that...for two reasons, i am oncall, and can;t have alcohol...and we won;t be private, so you might get us caught...ok?
[16:52] <promqueen2003> ok, i forgot
[16:53] <promqueen2003> that is ok'
[16:53] <ARH2> np, i will always say, when i have a problem, so you can helpo me solve iut...thanks
[16:54] <promqueen2003> u r such a sweet man
[16:54] <ARH2> what would you like to have happen tonight?
[16:54] <ARH2> :)
[16:54] <promqueen2003> i cant believe u r single
[16:54] <promqueen2003> i would like to be held in your arms and loved
[16:54] <ARH2> it is easy, not many ladies are all that attentive to me, nor do most attract me...
[16:54] <ARH2> mmm, come to me, my dear ann
[16:54] <promqueen2003> hehee
[16:55] <promqueen2003> u r making me blush

[16:55] <ARH2> it;s good, blush all you want...it makes you look more beautiful
[16:55] <promqueen2003> thanks
[16:55] <ARH2> you are welcome...
[16:55] <promqueen2003> i cant believe how swweet u r
[16:55] <ARH2> how tal are you>?
[16:55] <ARH2> any man, who wants to spend time with a lady, is sweet, or else
[16:56] <promqueen> 5-6
[16:56] <promqueen2003> how tall r u
[16:56] <ARH2> wow, you are going to be almost 6' when you are 18...cool
[16:56] <ARH2> 6'
[16:56] <promqueen2003> i hope not i dont want to b that tall
[16:56] <ARH2> how much do you weigh? 120?
[16:56] <ARH2> lol
[16:56] <promqueen2003> i like my size
[16:56] <promqueen2003> 110
[16:56] <ARH2> it will be taller than now, i know...
[16:56] <ARH2> mmm, lovely size
[16:56] <promqueen2003> thanks
[16:57] <promqueen2003> what do u weigh
[16:57] <ARH2> welcome...
[16:57] <ARH2> 220
[16:57] <ARH2> i could use losing 20 or so, but am not that unhappy
[16:57] <promqueen2003> do u work out
[16:57] <ARH2> what is your bra size?
[16:57] <ARH2> no, want to motivate ME to work out?
[16:57] <ARH2> you helo me, i'll help you
[16:57] <promqueen2003> 32 b

[16:57] <ARH2> help...
[16:57] <ARH2> ok...
[16:58] <promqueen2003> ok
[16:58] <ARH2> all of you sounds so lovely, and your picture, makes my mouth water
[16:58] <promqueen2003> i am really blushing now
[16:58] <ARH2> good...what are you wearing now?
[16:58] <promqueen2003> t-shirt and boxers
[16:58] <ARH2> mmm, i have on sweat shorts
[16:59] <ARH2> close enough to being the same
[16:59]<promqueen2003> what will u wear tonight
[16:59] <ARH2> khakis or jeans, you pick...and a tan shirt...
[16:59] <promqueen2003> that is fine
[16:59] <ARH2> and my rain jacket, blue and gold
[16:59] <ARH2> blue
[16:59] <promqueen2003> what kind of car do u have
[16:59] <ARH2> which, though, khakis, or jeans?
[16:59] <promqueen2003> jeans
[17:00] <ARH2> i have an 89 gmc jimmy...
[17:00] <promqueen2003> i hope it is red
[17:00] <ARH2> old and ready for replacement
[17:00] <ARH2> no, black, sorry
[17:00] <ARH2> :)
[17:00] <promqueen2003> black is my second favorite color
[17:00] <promqueen2003> red is my favorite
[17:00] <ARH2> the new yukion i will get in a while is tan...better?
[17:00] <ARH2> yukon...
[17:00] <promqueen2003> those r nice cars
[17:00] <promqueen2003> my moms bf has one
[17:00] <promqueen2003> black

[17:01] <ARH2> mmm, yes, got things i want to buy before i get a new car, so making this one last...
[17:01] <ARH2> mmm, what will she say about us?
[17:01] <ARH2> :)
[17:01] <promqueen2003> what do u want to buy
[17:01] <ARH2> a house
[17:01] <promqueen2003> i wont tell her until i feel it is ok
[17:01] <promqueen2003> or u think its ok .
[17:02] <ARH2> ok, good, but no matter, she will have a fit...maybe not for 4 yrs...;)
[17:02] <ARH2> she can;t say much, after 18
[17:02] <ARH2> if you move out
[17:02] <promqueen2003> ok
[17:02] <ARH2> :)
[17:02] <ARH2> ready for me to get shaved and dressed?
[17:02] <promqueen2003> ok i feel i can trust u
[17:03] <ARH2> ok, i will promise this, no hurt, no bother, no nothing, if you say no...
[17:03] <ARH2> my cellular ohone number is 734-476-7167...take it, if you don;t want to meet, or are late, or whatever, call it...and tell me, ok?
[17:03] <promqueen2003> can we meet between 6:30 & 7 if that is ok
[17:03] <promqueen2003> i have to take a shower
[17:03] <ARH2> yes...perfect for me...
[17:03] <promqueen2003> and get dressed
[17:03] <ARH2> i do too, and drive there, thru ruch hour...:)
[17:04] <ARH2> rush
[17:04] <promqueen2003> ok, well i am gonna sign off nad start to get ready
[17:04] <promqueen2003> ok

[17:04] <ARH2> i will not hug you or kiss yo in the restaurant, ok>? even though i want to very much, but we could get me arrested if we do that...
[17:04] <promqueen2003> ok
[17:05] <ARH2> but later, when we walk or go to a movie, we can...alright?
[17:05] <promqueen2003> ok
[17:05] <promqueen2003> should i wear a bra
[17:05] <ARH2> ok...i'll be there about 6:30...mmm, if you wish to, what is normal for you...as i want those lovely breastst o stay young forever, please
[17:06] <ARH2> and will mom say anything, if you come home without it later?
[17:06] <ARH2> if you didn;t wear one, i mean
[17:07] <promqueen2003> she would not know
[17:07] <promqueen2003> i will tell her i am going out with my girlfriends
[17:07] <ARH2> ok...what will she think you were doing, when she asks?
[17:07] <ARH2> what will you say?
[17:07] <ARH2> ok, you are ahead of me. . .:)
[17:07] <promqueen2003> i will tell her i went to the movies
[17:08] <ARH2> ok, think of one you want to se. . .:)
[17:08] <promqueen2003> ok
[17:08] <promqueen2003> roadtrip
[17:08] <promqueen2003> is the movie i would like to see
[17:08] <ARH2> ok, cool, bring the paoer, or we can dig one up...kisses, ann, seee you at 6:30 -7 pm,,,
[17:09] <ARH2> roadtrip it is
[17:09] <promqueen2003> ok
[17:09] <promqueen2003> bye alan

[17:09] <ARH2> ...wait
[17:09] <promqueen2003> what?
[17:09] <promqueen2003> ?
[17:09] <ARH2> if i get called right at 7 pm... i need a way to tell you...i am NOT going to miss this, UNLESSS work takes me...how can i tel you?
[17:10] <promqueen2003> just send me email
[17:10] <promqueen2003> if u r not there i will go home and check
[17:10] <promqueen2003> promqueen2003@hotmail.com
[17:11] <promqueen2003> if u do not show up i will know it was because of work
[17:12] <promqueen2003> hello?
Session Close: Fri May 19 17:13:38 2000

Session Start: Fri May 19 17:12:11 2000

[17:12] Session Ident: ARHpilot2 (ARH@ip182.ann-arbor4.mi.pub-ip.psi.net)

[17:12] <ARHpilot2> back, disconnected
[17:12] <promqueen2003> oh
[17:12] <promqueen2003> if u do not show up i will know it is because of work
[17:12] <ARHpilot2> ok, and email me at arhpilot@ earthlink.net...ok?
[17:13] <promqueen2003> ok
[17:13] <ARHpilot2> kisses, ann,...
[17:13]<promqueen2003> i hope to see u
[17:13] <ARHpilot2> i do you too...i will be there
[17:13] <promqueen2003> bye

[17:13] <ARHpilot2> bye
Session Close: Fri May 19 17:14:01 2000

STATE OF MICHIGAN — SEARCH WARRANT AND AFFIDAVIT

COUNTY OF WAYNE SS — PAGE 1 OF 5 PAGES

Affiant, having subscribed and sworn to an affidavit for a Search Warrant, and I having under oath examined affiant, am satisfied that probable cause exists:

THEREFORE, IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN, I command that you search the following described place:

The residence and storage area of the Defendant Alan Roger Harris, who resides at 636N Six Mile Road, Whitmore lake, MI 48189. The residence is the second residence north of Madouse Court and Six-Mile. The residence is on the eastside of the roadway. It is a single story red brick duplex, which faces Six Mile Road. (West) The residence "636" is the northern portion of the duplex. The numerals 636 are on a plaque to the right of the door to 636.

And to seize, secure, tabulate and make return according to law the following property and things:

All computer, floppy disk, hard drives and software, photographs, or video tapes depicting children in lewd poses

or lewd exhibitions, diaries or other records of child's sex partner (s), including names, dates, times & type of sexual activity, sexual paraphernalia or other erotica used by the suspect in the course of seducing the child victim or other children, correspondence which appears to relate to the exploitation of children, publications which relate to child exploitation, pedophilia, and/or child molestation.

Affiant in support of the issuance of this Warrant swears to the following facts:

The Affiant is a Police Officer, rank of Detective employed by the Wayne County Sheriff Department and has been so employed for the past 24 years. The Affiant is currently assigned to the Detective Bureau and attached to the Wayne County Sheriff Internet Crime Bureau. The Affiant has been involved in over 1000 criminal investigations for various offenses, including narcotics trafficking, homicide, sex crimes, assaults, and Internet crimes.

On May 19, 2000, Deputy Ray Johnson, who is assigned to the Wayne County Sheriff Internet Crime Bureau, logged onto a random Dainet server using the Internet relay Chat program, mIRC. Said officer assumed the alias "Promqueen2003", a 14-year-old female from Inkster, MI. At 1521 hours, the Defendant utilizing the screen name "ARH2" initiated a chat with the Complainant. A WHOIS was conducted and the URL was identified as ARH@ip141.ann-arbor4.mi.pub-ip.psi.net and an IP address was resolved as 38,27.133.144. During the chat, the Defendant asked the Complainant's age and said Complainant respond that they were 14 not 15 as the

Defendant had assumed. At that point, the Defendant responded that he was 50 and lived in Michigan and that he would send the Complainant a picture of himself. He sent said file, which was titled "ARH.jpg."

The Complainant responded that they too were from Michigan. Afterward, the chat got sexually explicit in the Defendant asked the Complainant was she sexually active. When the Complainant responded that they were a virgin. Upon hearing this, the Defendant asked the Complainant 'you want to start sex right away?" When asked by the Complainant did he have a girlfriend, the Defendant asked her did she want to be her. At that time, the Complainant asked the Defendant would he let her be his girlfriend and he responded that it would be fine with him. He then informed the Complainant that they could tell your mother, you are sitting my kids, this summer. Stating "when really you can share my bed, if you want." The Defendant went on to say that and I quote "we would have to do lots to protect you from pregnancy and injury." After a while, the Defendant suggested that they meet and it was decided that he and the Complainant would meet at McDonalds located on Michigan Avenue and Merriman, Westland, MI. When said Defendant arrived and went inside McDonalds' looking for the Complainant he was arrested. The Defendant's vehicle was impounded and he was transported to 3100 Henry Ruff for further processing.

After Defendant was booked, I read and explained to him his Miranda Rights and said Defendant stated that he understood said rights and furnished me with a verbal and written

statement. The Defendant stated that he had was chatting with the Complainant via the Internet at his home.

Affiant has had conversations with and attended classes approved by the Michigan Law Enforcement Training Council instructed by experts in the field of Child exploitation and abuse. From those classes I have learned many facets of the personality of persons with inclination toward sexual activity with minors and child pornography.

There are persons whose sexual objects are children. They receive sexual gratification and satisfaction from actual physical contact with children and from fantasy involving use of pictures and other photographic or art mediums and writings on or about sexual activity with children.

These people collect sexually explicit materials consisting of photos, magazines, motion pictures, video tapes, books and slides depicting juveniles, that they use for their own sexual gratification and fantasy.

These people rarely dispose/destroy correspondence received from other people with similar interests, unless they are specifically requested to do so. These people use such photo a videotapes as described above as a means of reliving fantasies or actual encounters with the depicted children. They also utilize the photos as keepsakes and as means of gaining acceptance, status, trust, and psychological support by exchanging, trading or selling them to other people with similar interests. These photos are kept and carried by these

people as a constant threat to the child of blackmail and exposure.

Those people who are afraid of discovery often maintain and run their own photographic production and reproduction equipment. This may be as simple as the sue of "instant" Photo equipment, such as a Polaroid, cameras, video equipment, or as complex completely outfitted photo labs.

These people often collect, read, copy or maintain names, addresses, phone numbers or lists of persons who have similar sexual interests. There may have been collected by personal contact or through advertisements in various publications. These contacts are maintained as a means of personal referral, exchange and commercial profit. These people often correspondence with others with the same interests through the use of the computerized bulletin boards and the Internet. The names may be maintained in the Original publication, in phone, or notebooks or in computer hard or software, or merely on scrapes of paper. Vast quantities of child pornography may be also stored on electronic media such as computer hard drives, computer diskettes, magnetic or digital tape and computer CD-ROM disks.

These people often keep the names of the children they are involved with or with whom they have sexual contact with. They maintain these names in such the same manner as described in the preceding paragraph for much the same reasons.

These people maintain diaries of their sexual encounters with children. These accounts of their sexual experiences are used as a means of reliving the encounters when the offender has no child to molest. Such diaries might consist of a notebook, scrapes of paper, or contained on audio tape or computer entries into a "home computer".

These people collect books, magazines, newspaper, and other writing on the subject of sexual activity with children. They maintain these as a way of understanding their own feeling toward children.

These people use sexual aids such a dildos, fashioned after a man's penis of various sizes and shapes, in addition to other sexual aids, in the seduction of their victims. They often utilize these as a means of exciting their victims and arousing the curiosity of the children.

These people collect and maintain books, magazine articles and other writings on the subject of sexual activity. These books and materials may be on the topic of human sexuality and sex education or consist of sex manuals discussing or showing various sexual acts, positions, or sexual activities. These materials are used as a means of seduction of the victim by arousing curiosity, demonstration of propriety of the acts desired, explaining or demonstrating what the offenders desires to be done and as a means of sexual arousal on the part of the offender, particularly when naked children are shown or depicted in the materials.

These people often use drugs as a means of inducement to get a child to particular location such as the offender's home. Alcohol is also used in this fashion. Both drugs and alcohol are also used as a means of seduction, reducing the child's inhibitions for sexual excitement.

These people maintain and keep things of interest to their victims. They may consist of magazines, books, and toys for the age level of the victims they desire to attract and may be as complicated as video games, to train set, and computers.

These people often keep mementos of their relationships with specific children as a means of remembrance. They may consist of underwear or other garments or things, which are unique to the relationship they had with the child. These people obtain, collect and maintain photographs of the children they are or have been involved with.

These photos may depict children fully clothed, in various stages of undress to totally nude, in various activities, not necessarily sexually explicit. These photos are rarely, if even disposed of and are revered with such devotion that they are often kept upon the individual's person in wallets and such. If such a person depicting the child in the nude takes a picture of a child, there is a highly probability the child was molested before, during or after the photo taking session because the act of the posing is such a great sexual stimulus for the individual.

All of the materials requested for seizure will identify children who are being sexually exploited through child molestation and child pornography. The materials will also identify other

adults who are engaging in the sexual exploitation of children by these means. In addition, these materials will demonstrate the sexually proclivity, inclination, preference, and activities of the person under investigation providing evidence that will tend to show that the person under investigation has violated Michigan State laws with respect to engaging in child sexually abusive activity and possible distribution of child pornography.

Therefore, Affiant submits that there is reasonable cause to believe that evidence of child sexually abusive activity or material will be found at the aforementioned location.

s/_____
Affiant

Subscribed and sworn to me and issued under my hand this 20 Day of May 2000

Approved s/_____
Assistant Prosecuting Attorney

Judge: s/_____
Judge of 18th District Court